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FROM : Michael J. Marcin, Esq. of Fay Kaplun & Marcin, LLP
DATE : August 28, 2006
SUBJECT : U.S. Patent Appln. Serial No. 09/621,400
for *Method and Apparatus for Management of an Automated License*
Our Ref.: 40101/10101

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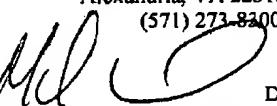
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Inventor(s) : Dere et al.
Serial No. : 09/621,400
Filing Date : July 21, 2000
For : Method and Apparatus for Management of an Automated License
Group Art Unit: : 2161
Examiner : T. Y. Chen

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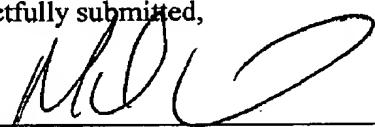
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By: 
Michael J. Marcin Reg. No. 48,198 Date: August 28, 2006

TRANSMITTAL

In support to the Notice of Appeal filed June 28, 2006, transmitted herewith please find an Appeal Brief for filing in the above-identified application. Please charge the Credit Card of **Fay Kaplun & Marcin, LLP** in the amount of \$500.00 (PTO-Form 2038 is enclosed herewith). The Commissioner is hereby authorized to charge the **Deposit Account of Fay Kaplun & Marcin, LLP NO. 50-1492** for any additional required fees. A copy of this paper is enclosed for that purpose.

Respectfully submitted,

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Attorney Docket No.: [40101/10101]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICERECEIVED
CENTRAL FAX CENTER

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Serial No. : 09/621,400

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For : Method and Apparatus for Management of an Automated License

Group Art Unit: : 2161

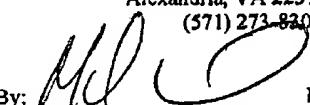
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AUG 28 2006

PATENT
 Attorney Docket No.: 40101 - 10101

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
 BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:)	
)	
Dere et al.)	
)	
Serial No.: 09/621,400)	Group Art Unit: 2161
)	
Filed: July 21, 2000)	Examiner: T. Y. Chen
)	
For: METHOD AND APPARATUS FOR MANAGEMENT OF AN AUTOMATED LICENSE)	Board of Patent Appeals and Interferences
)	

Mail Stop: Appeal Brief - Patents
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 Arlington, VA 22313-1450

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

In support of the Notice of Appeal filed June 28, 2006, and pursuant to 37 C.F.R.
 § 41.37, appellants present their appeal brief in the above-captioned application.

This is an appeal to the Board of Patent Appeals and Interferences from the
 Examiner's final rejection of claims 1-4, 6, 7, 9-13, 17, 22, 24, 25 and 39-41 in the final Office
 Action dated March 28, 2006 and clarified in the Advisory Action dated July 20, 2006. The
 appealed claims are set forth in the attached Claims Appendix.

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1. Real Party in Interest

This application is assigned to Wind River Systems, Inc., the real party in interest.

2. Related Appeals and Interferences

There are no other appeals or interferences which would directly affect, be directly affected, or have a bearing on the instant appeal.

3. Status of the Claims

Claims 1-4, 6, 7, 9-13, 17, 22, 24, 25 and 39-41 have been rejected in the final Office Action, and are the subject of the present appeal.

4. Status of Amendments

All amendments submitted by the Appellants have been entered.

5. Summary of Claimed Subject Matter

The present invention comprises a method and apparatus for an automated license daemon and database interface. (See Specification, page 1, lines 5-10). Independent claim 1 recites a method of managing an automated license installation on a client computing system, including the step of retrieving license information of the client computing system from a license database located on a remote server. As described in the specification of the present application, a setup program queries a license database to obtain license configuration information such as host IDs, port numbers, host names, products licenses, licenses used, etc. (Id. at page 5, line 21-

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30). Claim 1 also recites receiving a selection of a configuration of the retrieved license information and confirming the configuration of the retrieved license information on the client computing system. According to the specification, the setup program runs a license management configuration page displaying available hosts and licenses details, and allowing the user to control adding and/or removing of hosts. (Id. at page 5, line 32-37). A diagnostic program is then run on a selected host to determine whether a license management daemon is running on the selected host. (Id. at page 5, line 37- page 6, line 9). Claim 1 also recites receiving one of a license file relating to the confirmed configuration of the retrieved license information and an error message. The specification states that the setup program queries the license database for license information and either returns the license information or an error message. (Id. at page 9, lines 10-35). If the license information is returned, a license file is retrieved from the license database and installed on the user's computing system. (Id. at page 9, line 37- page 10, line 16).

Independent claim 17 recites a system for managing an automated license installation on a client computing system, the system including a setup program which resides on the client computing system, the setup program configured to send post requests containing user information using hypertext transfer protocol (HTTP) over a network to an HTTP port. As described in the specification, the setup program connects to the server over a bi-direction socket connection via an HTTP tunneling agent. (Id. at page 3, lines 10-24). Claim 17 also recites a tunneling agent which resides on a remote server system accessible via the network and having the HTTP port and a firewall, the tunneling agent configured to receive the post requests from the

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HTTP port. As stated in the specification, post requests are sent through a firewall to a port reserved for HTTP requests and responses. (*Id.* at page 12, lines 6-19). Claim 17 further recites an automated license daemon program which resides on the remote server system, the automated license daemon configured to receive the user information from the tunneling agent. As stated in the specification, the license management daemon formats the setup programs's requests to the license installation database, from which a reply is received. (*Id.* at page 12, lines 21-35). Claim 17 further recites a first database which resides on the remote server system and on which is stored license information and a license file, the first database configured to receive a request from the automated license daemon program and return a reply, the reply including one of the license information, the license file, and an error message; wherein the automated license daemon is further configured to send a reply HTTP message based on the reply to the setup program over the network using the HTTP port. (*Id.*).

6. Grounds of Rejection to be Reviewed on Appeal

- I. Whether claims 1-4, 6, 7, 11-13 and 39-41 are unpatentable under 35 U.S.C. § 102(e) as anticipated by U.S. Patent Application Pub. No. 2005/0273436 to Coley et al ("Coley").
- II. Whether claims 9-10, 17, 22, 24 and 25 are unpatentable under 35 U.S.C. § 103(a) as obvious over Coley in view of U.S. Patent No. 6,006,035 to Nabahi.

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7. Argument

- I. The Rejection of Claims 1-4, 6, 7, 11-13 and 39-41 Under
35 U.S.C. § 102(e) as Anticipated by U.S. Patent Application
Pub. No. 2005/0273436 to Coley et al. Should Be Reversed.

A. The Examiner's Rejection

In the Final Office Action, the Examiner rejected claims 1-4, 6, 7, 11-13 and 39-41 under 35 U.S.C. 102(e) as unpatentable over Coley. (See 3/28/06 Office Action, pp. 2-4). Coley describes a system for automated monitoring and management of licensed software. (See Coley, p. 1, ¶ [0002]). A client module on a personal computer operates to enable/disable a software application based on a response from a license server. (Id. at p. 4, ¶ [0045]). The license server contains a database of license records and an agent module communicating with the client module via the Internet or a public network. (Id.). When the software application is initiated, the client module connects to the agent module and forms a license validity inquiry request containing the application name, application version number, a data/time stamp, the name of the license server, and other information. (Id. at p. 5, ¶¶ [0051]-[0052]). If a corresponding license record is stored in the database, a response message containing a pointer to the location of the license record is returned. (Id.). If no corresponding record is found, the user is prompted with a message, such as contact information for a sales representative or a web page where a license can be purchased. (Id. at p. 5, ¶ [0053]). If the response message indicates that the license record was located, a license ID corresponding to the license record is recorded and

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the application is enabled by the client module. (Id. at p. 5, ¶ [0054]).

- B. The Cited Reference Does Not Disclose Receiving a Selection of a Configuration of the Retrieved License Information and Confirming the Configuration of the Retrieved License Information on the Client Computing System as Recited in Claim 1.

The Examiner stated in the Final rejection that Coley discloses the steps of “receiving a selection of a configuration of the retrieved license information” and “confirming the configuration of the retrieved license information on the client computing system.” (See 3/28/06 Office Action, p. 3).

Initially, Appellants note that Coley does not relate in any way whatsoever to the installation of software licenses. The object of Coley’s invention is to provide a method of checking the validity of software that has already been installed. How the software was installed (e.g., with a valid or invalid license) is irrelevant to the operation of Coley’s system. The Examiner has cited portions of Coley that merely reiterate this functionality. (See Coley, p. 4, ¶ [0031]; p. 13, ¶ [0115]). That is, Coley teaches that a software application can be configured to check for a valid license, the absence of which disables the application. Configuring an application, however, is not the same as configuring the installation of a license. Whereas the former deals with the general operation of an application, the latter is directed towards the initial setup of the application. Furthermore, it is unclear what the Examiner regards as the “selection” in Coley. Neither the user nor the client/agent modules are capable of selecting a license or a license configuration. The client and the agent modules merely attempt to locate a license record

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from the database. Thus, Appellants respectfully submit that Coley neither discloses nor suggests “receiving a selection of a configuration of the retrieved license information,” as recited in claim 1.

In addition, Coley does not teach or suggest a confirmation of a license configuration. When the license record is found, the client module is able to confirm that the license is valid. However, when the validity is confirmed, this provides no indication of how the license is configured. The validity information not only fails to provide additional information regarding a state of the license, it provides no confirmation at all that the selected configuration was implemented properly. Thus, Appellants respectfully submit that Coley neither discloses nor suggests “confirming the configuration of the retrieved license information on the client computing system,” as recited in claim 1.

In the Advisory Action, the Examiner stated that the features of enabling a user to configure and confirm a license installation are not recited in the claims. Appellants respectfully disagree with this contention. Claim 1 clearly recites a receiving of a selection of a configuration and a confirmation of that configuration. Although it is not explicitly stated that the user is the one performing the selection, this is irrelevant in view of the fact that Coley’s system does not utilize any kind of selection whatsoever. Selection is based on a choice. The client module does not have such a choice; the information it transmits to the agent module is always required. Furthermore, the transmission is made mandatory upon initialization of the software application. Thus, there is no selection taught in Coley. In addition, as discussed above, confirmation of

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validity is not equivalent to confirmation of configuration. Thus, Appellants respectfully submit that the features relied upon with reference to the patentability of claim 1 are, in fact, supported by the recitation of this claim.

Based on the reasons discussed above, Appellants respectfully request that the Board overturn the Examiner's rejection under 35 U.S.C. 102(e) of independent claim 1 and all the claims depending directly or indirectly therefrom (claims 2-4, 6-7, 11-13 and 39-41).

II. The Rejection of Claims 9-10, 17, 22, 24 and 25 Under 35 U.S.C. § 103(a) as Obvious over U.S. Patent No. U.S. Patent Application Pub. No. 2005/0273436 to Coley et al. in View of U.S. Patent No. 6,006,035 to Nabahi Should Be Reversed.

A. The Examiner's Rejection

In the Final Office Action, the Examiner rejected 9-10, 17, 22, 24 and 25 under 35 U.S.C. 103(a) as unpatentable over Coley in view of Nabahi. (See 3/28/06 Office Action, pp. 5-6).

Nabahi describes a system for custom computer software installation using a standard rule-based installation engine. (See Nabahi, Abstract). The system uses a simplified script language file that contains custom installation parameters created by a system administrator. (Id. at col. 4, line 66 - col. 5, line 10). The file comprises a predetermined sequence of installation phase portions corresponding to time periods between a predetermined set of installation events. The installation events may include: an initialization of internal settings of the rule-based engine; a display of a license agreement; a request for a destination directory; and a copying of application software files to a destination computer. (Id. at col. 5, lines 36-50). After the file is written and compiled, it is copied to a source directory containing an executable file, SETUP.EXE, for the rule-based installation engine. SETUP.EXE is then

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executed on each client computer. (Id. at col. 7, line 42 - col. 8, line 37).

B. The Cited References Do Not Disclose Receiving a Selection of a Configuration of the Retrieved License Information and Confirming the Configuration of the Retrieved License Information on the Client Computing System as Recited in Claim 1.

As previously discussed, Coley fails to disclose or suggest "receiving a selection of a configuration of the retrieved license information" and "confirming the configuration of the retrieved license information on the client computing system," as recited in claim 1. Appellants respectfully submit that Nabahi is insufficient to cure this deficiency. Although Nabahi is related to the installation of software, the methods disclosed by Nabahi are in direct opposition to the teachings of the present invention as recited in claim 1. Nabahi discloses a system of software installation in which an administrator is allowed to customize an installation program for a software application. The purpose for allowing customization is, as described by Nabahi, two-fold: (1) the administrator is able to install the application on a plurality of client computers using a standard rule-based installation engine, and (2) the installation can be customized without knowledge of the rule-based installation language used by the engine. (See Nabahi, col. 4, lines 50-63). It is precisely this purpose that places Nabahi in opposition to the teachings recited in claim 1. Because Nabahi's system is designed for mass installation of the software application on a plurality of client computers, no customization is possible. The users of the client computers have no control over how the software application is installed. In so far as the installation procedure can be customized by the administrator, the customization is performed

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prior to executing the installation program. This is evident from the required compiling of the script language file. The customization procedure cannot constitute a selection because it is predetermined and, moreover, specified by the administrator rather than chosen. Thus, Appellants respectfully submit that neither Coley nor Nabahi, either alone or in combination, discloses or suggests "receiving a selection of a configuration of the retrieved license information" and "confirming the configuration of the retrieved license information on the client computing system," as recited in claim 1. Accordingly, Appellants respectfully request that the Board overturn the Examiner's rejection under 35 U.S.C. 103(a) of claims 9 and 10, which depend from and include the limitations of claim 1.

- C. The Cited References Do Not Disclose a Setup Program which Resides on the Client Computing System, the Setup Program Configured to Send Post Requests Containing User Information Using Hypertext Transfer Protocol (HTTP) Over a Network to an HTTP Port and a Tunneling Agent which Resides on a Remote Server System Accessible via the Network and Having the HTTP Port and a Firewall, the Tunneling Agent Configured to Receive the Post Requests from the HTTP Port as Recited in Claim 17.

Absent from either Coley or Nabahi is any discussion of HTTP tunneling or an HTTP tunneling agent. The specification of the present application states that the setup program communicates with a tunneling agent on the server by sending a request over a network and a firewall to a port reserved specifically for HTTP requests and responses. (See Specification, page 12, lines 6-19). A bi-directional socket connection is established, allowing messages and web pages to be passed back and forth through the dedicated port. (Id. at page 3, lines 10-20;

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Fig. 7).

Although Coley discloses a system that can be implemented over the Internet, the system requires that the client module instruct a modem to dial a 1-800 number maintained by a software provider that accesses a local internet gateway. (See Coley, p. 5, ¶ [0051]). Furthermore, Coley does not restrict connectivity of the system and mentions the use of an Ethernet network card, ISDN connection card, Internet card and terminal device as alternatives to a conventional modem. (Id. at page 12, ¶ [0109]). The only requirement is that when utilized in an Internet environment, any communications protocol used must be based on a TCP/IP protocol. (Id.). Thus, Coley only teaches establishing a TCP connection and provides no mention or suggestion of HTTP tunneling.

Nabahi's system operates within a local network. After obtaining a copy of the application software containing the rule-based installation engine, the system administrator modifies the application software as previously described and distributes the application software to each client computer. (See Nabahi, col. 7, lines 42-66). Thus, Nabahi's system does not use HTTP requests or HTTP tunneling, and can only be implemented in a local network, which does in which messages are not conducted using HTTP.

Accordingly, Appellants respectfully submit that neither Coley nor Nabahi, either alone or in combination, discloses or suggests "a setup program which resides on the client computing system, the setup program configured to send post requests containing user information using hypertext transfer protocol (HTTP) over a network to an HTTP port" and "a

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tunneling agent which resides on a remote server system accessible via the network and having the HTTP port and a firewall, the tunneling agent configured to receive the post requests from the HTTP port," as recited in claim 17. Accordingly, Appellants respectfully request that the Board overturn the Examiner's rejection under 35 U.S.C. 103(a) of claim 17 and all claims depending directly or indirectly therefrom (claims 22, 24 and 25).

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9. Conclusions

For the reasons set forth above, Appellants respectfully request that the Board reverse the final rejections of the claims by the Examiner under 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a) and indicate that claims 1-4, 6, 7, 9-13, 17, 22, 24, 25 and 39-41 are allowable.

Respectfully submitted,

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CLAIMS APPENDIX

1. A method of managing an automated license installation on a client computing system, the method comprising the steps of:

retrieving license information of the client computing system from a license database located on a remote server;

receiving a selection of a configuration of the retrieved license information;
confirming the configuration of the retrieved license information on the client computing system; and

receiving one of a license file relating to the confirmed configuration of the retrieved license information and an error message.

2. The method according to claim 1, further comprising the step of:

requiring an entry of a valid PIN number.

3. The method according to claim 1, further comprising the step of:

requiring an affirmative permission of the client computer system before retrieval of license information from the license database.

4. The method according to claim 1, further comprising the step of:

determining whether a flexible license management utility software is installed on the client computing system, and installing the flexible license management utility software on the client computing system if the flexible license management utility software is determined as not being installed on the client computing system.

5. (Canceled)

6. The method according to claim 1, further comprising the step of:

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updating the license database based on the configuration of the retrieved license information.

7. The method according to claim 1, further comprising providing at least one license installation option on the client computing system;

wherein the at least one license installation option includes at least one of:

- a full license installation;
- a program group installation; and
- a floating license installation.

8. (Canceled)

9. The method according to claim 1, further comprising the step of:

determining an operating system of the client computing system.

10. The method according to claim 9, further comprising the step of:

configuring the operating system of the client computing system for the automated license installation by setting an environment variable of the operating system.

11. The method according to claim 1, further comprising the steps of:

determining whether a previously installed license file is valid; and

performing one of an updating operation and a replacement operation with respect to the previously installed license file.

12. The method according to claim 11, further comprising the step of:

querying the client computing system on whether one of the updating operation and the replacement operation is to be performed with respect to the previously installed license file.

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13. The method according to claim 1, further comprising the step of:
determining if a network connection exists to the client computing system.

14 - 16. (Canceled)

17. A system for managing an automated license installation on a client computing system comprising:

a setup program which resides on the client computing system, the setup program configured to send post requests containing user information using hypertext transfer protocol (HTTP) over a network to an HTTP port;

a tunneling agent which resides on a remote server system accessible via the network and having the HTTP port and a firewall, the tunneling agent configured to receive the post requests from the HTTP port;

an automated license daemon program which resides on the remote server system, the automated license daemon configured to receive the user information from the tunneling agent; and

a first database which resides on the remote server system and on which is stored license information and a license file, the first database configured to receive a request from the automated license daemon program and return a reply, the reply including one of the license information, the license file, and an error message;

wherein the automated license daemon is further configured to send a reply HTTP message based on the reply to the setup program over the network using the HTTP port.

18 - 21. (Canceled)

22. The system according to claim 17, wherein the setup program is further configured to install the license file on the client computing systems when the setup program receives the license file.

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23. (Canceled)

24. The system according to claim 17, further comprising:

a second database on which resides a master copy of license information and license file from which an extract is made and becomes the source for the first database.

25. The system according to claim 24, wherein the information on the second database and the first database are updated independently and then synchronized.

26 - 38. (Canceled)

39. The method of claim 1, further comprising sending a message requesting license information

40. The method of claim 39, wherein the message includes at least one of a host ID, license number, and request code.

41. The method of claim 1, wherein the retrieved license information includes at least one of available licensed products, host ID information, port number information, number of licenses available and number of licenses currently installed.

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EVIDENCE APPENDIX

No evidence has been submitted herewith or is relied upon in the present appeal.

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RELATED PROCEEDINGS APPENDIX

There are no related proceedings and/or decisions which relate to the present appeal.

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